

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

STAMP APPLICATION NO. 199/91
ORIGINAL APPLICATION NO. 198/91

~~Q.A. No.~~

T.A. No.

198

DATE OF DECISION 29.4.91

Sham Sundar Nayak Petitioner

Shri M K Dhar Advocate for the Petitioner(s)

Versus

Union of India & 2 others Respondent

---- Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U C Srivastava, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY 400 614

Stamp Application No. 199/91
Original Application No. 198/1991

Sham Sundar Nayak
Quarter No. 74/1
Kohima Lines
Pune - 411 001

.. Applicant

V/s.

1. Chief Records Officer
Army Service Corps Records (Supply)
Bangalore 560007

2. The Chief of the Army Staff
Army Headquarters
New Delhi 110 001

3. Union of India through
Secretary, Ministry of Defence,
New Delhi 110 001

.. Respondents

Coram: Hon'ble Shri Justice U C Srivastava, V.C.
Hon'ble Shri M.Y. Priolkar, Member(A)

Appearances:

Shri M.K. Dhar
Advocate
for the applicant

ORAL JUDGMENT

DATED : 29-04-1991

(Per: Shri U C Srivastava, Vice Chairman)

The applicant has started his service as Sepoy Clerk (GD/SD) in 1968 in the Indian Army and was promoted as Naik Clerk in 1971 and as Havildar Clerk in 1979. After dismissal of the Writ Petition by the High Court on the ground that after coming into force of the Administrative Tribunals Act the Writ Petition was not maintainable by the High Court, and as such he has

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approach^{ed} the Tribunal. The applicant has prayed that he be reinstated in service with all arrears of pay and allowances, giveⁿ his promotion with effect from that date he was due, and allow his family to occupy the Govt. accommodation as per rules.

2. Admittedly he was not a Civil Government servant inasmuch as he was in Indian Army and served as Junior Commissioned Officer in the Indian Army at the appropriate point of time. While in service he was not promoted from Havildar Clerk to Naib/Subedar and was superseded by his juniors against which he made several representations and ultimately made a statutory complaint to the Chief of Army Staff. He could not get any reply but subsequently he was relieved from Army service, which has also been challenged by the applicant to be illegal. Thus the grievance of the applicant who was holding the status of Junior Commissioned Officer^{is}, that in spite of his representation, ~~regarding~~ non promotion while he was in service and ~~relieving~~ him from service, according to him, was not legally done.

3. Section 2 of the Administrative Tribunals Act 1985 provides that the Act shall not apply to any member of the naval, military or air force or any other armed forces of the Union. The contention on behalf of the applicant is that at present he is not a member of Armed forces as he ~~has~~ is relieved from the services. But, his grievance pertains to a period when he was in Armed services. Section 2 of the Act will not only apply for those who are still in armed force services but the same will also apply to those who claim exclusion or retrenchment from services without authority of law.

Reference may also be made to Section 14 of the Act which reads as under:

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal.:

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to

- a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a ~~xxxxxx~~ civilian;
- b) all service matters concerning -
 - i) a member of any All India service; or
 - ii) a person (not being a member of an All India service of a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or
 - iii) a civilian appointed to any defence service or a post connected with defence;and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.
- c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b) being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

- 3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall ~~also~~ also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court

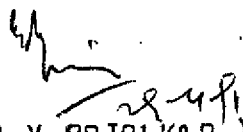
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in relation to

- a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and
- b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person & in connection with such affairs.

Thus it excludes from its purview all the defence personnel except the civilians appointed to any defence service or post in connection with defence. The members of defence services or who were members of defence services are excluded under section 2 of the Administrative Tribunals Act. This obviously excludes those who were in armed forces as provided under section 2 of the Administrative Tribunals Act.

4. In view of the fact that the applicant was a member of the Indian Army and raised dispute in respect of a period when he was in Indian Army and claims the retrenchment order illegal, this Tribunal has no jurisdiction to entertain his application and it is accordingly disposed of. The Application is rejected. The relevant papers be returned to the applicant and a copy of the same be placed on record.


(M. Y. PRIOLKAR)
MEMBER (A)


(U. C. SRIVASTAVA)
VICE CHAIRMAN